


Sandwich Isles Communications, Inc.

 A Waimana Company

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The Secretary of the
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

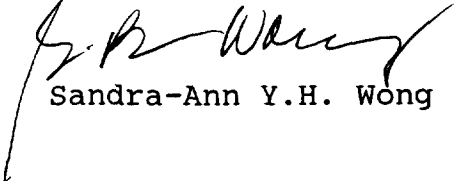
Re: In the Matter of Federal-State Joint Board on
Universal Service; CC Docket No. 96-45

Dear Mr. Secretary:

Please find enclosed for filing an original and 11 copies of Sandwich Isles Communications, Inc.'s Request for Clarification or in the Alternative Petition for Reconsideration. I have enclosed an additional copy and a self-addressed stamped envelope for you to return to me a filed stamped copy.

Thank you for your attention to this matter.

Very Truly Yours,


Sandra-Ann Y.H. Wong

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Federal-State Joint Board on)
Universal Service;)
_____)

CC Docket No. 96-45

TO: The Secretary of the
Federal Communications Commission
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Washington, D.C. 20554

REQUEST FOR CLARIFICATION OR IN THE
ALTERNATIVE PETITION FOR RECONSIDERATION

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SUMMARY

The 1996 Act, Joint Board Recommendation, and FCC Rules all advocate that Universal Service i.e. telecommunications services at an affordable rate for all Americans, is in the public interest. They also advocated deregulation and the opening of the telecommunication market to competition. However, as the Rules are currently promulgated, it is not clear that a new eligible carrier is eligible to receive USF funds calculated under traditional methodology. In addition, there is no provision that would allow it to become a member of NECA. This would result in entire communities; and in the case of Hawaii, the entire state; not being able to benefit from Federal Universal Service support.

Additionally, in order to meet the purpose of the Act of providing universal service to all Americans, it should be explicit in the Rules that an agency with regulatory authority over an area and/or a carrier serving an area should be able to designate eligible carriers as long as they meet the criteria established by the Act, even if that agency does not meet the Act's definition of a "state commission". This will ensure that an agency that is familiar with the problems of the unserved area will have the authority to designate the proper telephone company to serve the unserved area.

Therefore, Sandwich Isles Communications, Inc. respectfully requests that the Commission clarify the Rules, or in the alternative reconsider the Rules.

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REQUEST FOR CLARIFICATION OR IN THE
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Pursuant to 47 Code of Federal Regulations ("CFR") Chap. 1 (10-1-96 Edition) Section 1.429, Sandwich Isles Communications, Inc. ("SIC") hereby files a Request for Clarification or in the alternative Petition for Reconsideration on the Federal Communications Commission's ("FCC" or "Commission") Report and Order promulgating rules and implementing the statutory requirements of the Telecommunications Act of 1996 relating to universal service. The Report and Order were released by the FCC on May 8, 1997, but was not published in the Federal Register until June 17, 1997, thus SIC's petition is timely filed.

I. Background

SIC is a newly-formed telephone company which, on May 9, 1995, received a license from the State of Hawaii's Department of Hawaiian Home Lands ("DHHL")¹ for the construction and operation

¹The DHHL is a State agency created by a Federal statute in 1921, and made part of Hawaii's State Constitution when Hawaii was granted Statehood in 1959. The DHHL, organized under the

of a telecommunications network on Hawaiian Home Lands ("HHL") throughout the State of Hawaii. A \$250 million dollar investment is necessary to install a telecommunications infrastructure that meets the basic definition of universal service² within all lands of DHHL. SIC has been working with the United States Department of Agriculture Rural Utilities Service ("RUS") for three years to borrow a significant portion of this investment. RUS expects to issue a "characteristics letter" (loan commitment) to SIC for the first \$46 million dollars by August 1, 1997. The infrastructure will create a significant amount of job training and employment opportunities for the local community and contribute to educational and health services.

II. Issues for Clarification or in the Alternative Reconsideration

The Commission allows any interested parties to file a Petition for Reconsideration. SIC, which will operate under

Hawaiian Homes Commission, was created to manage the Hawaiian Home Lands Trust (the "Trust") and to develop and deliver land to native Hawaiians. The DHHL has exclusive statutory control of and responsibility for the management of lands in the State of Hawaii designated as Hawaiian Home Lands.

In recognition of the special relationship that exists between the United States and the native Hawaiian people, Congress has extended to native Hawaiians the same rights and privileges accorded to, among others, American Indians and Alaska natives under the Native American Programs Act of 1974.

²The Joint Board recommends that the definition of supportable services include: voice grade access to the public switched network, with the ability to place and receive calls; touch-tone or dual tone multi-frequency signalling (DTMF) or its functional equivalent; single-party service; access to emergency services; access to operator services; access to interexchange services; and access to directory assistance. See, Joint Board recommendation at 5.

these new rules, is a party in interest to this proceeding.

The following two issues have a significant adverse effect on the public's interest. Each issue appears to be an unintended result of the Universal Service Order dated May 8, 1997 and, therefore, should be reviewed. Both issues urgently need clarification or reconsideration:

- A. Issue: The FCC rules do not provide a clear mechanism for newly eligible carriers to join the National Exchange Carriers Association ("NECA") and receive Universal Service Funds ("USF") under traditional methodology.

Recommended Rule Change: That the FCC incorporate rules that allow new eligible carriers to join NECA and receive USF under traditional methodology.

The new Commission Rules, as promulgated on May 8, 1997, are silent regarding new companies serving previously unserved areas, which meet the requirements for Universal Service support, joining NECA. Since the Commission decided to retain NECA as the interim administrator for Universal Service support, if a new eligible carrier cannot join NECA, that carrier cannot receive USF as calculated under the traditional methodology.

The Telecommunications Act of 1996 (the "Act") was enacted to provide for ". . . advanced telecommunications and information technologies and services to all Americans. . ." through deregulation and competition. Congress specified that implementation of the 1996 Act should not jeopardize its long standing public policy of Universal Service; i.e. that telecommunications services be available and affordable for all Americans. The Act specifically states:

Section 254. Universal Service.

(b) Universal Service Principles.-The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(3) Access in Rural and High Cost Areas.-Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information service, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(emphasis added)

The Act also directed the Commission to convene a Federal-State Joint Board to recommend changes to the Commission's existing universal service support mechanisms. In particular, Congress directed the Joint board to recommend, and the Commission to adopt, a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in the statute. The Joint Board's recommendations were "fashioned to ensure quality telecommunications services at affordable rates to consumers, including low-income consumers, in all regions of the nation,

including rural, insular, and high cost areas."³

The Joint Board recommended that the only qualification for receiving universal service support be the criteria contained in section 214(e)(1).⁴ The Joint Board specifically recommended that the Commission not impose additional eligibility criteria.⁵ Other recommendations show the Joint Board contemplated new carriers being eligible for universal service support⁶ and did

³See, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, adopted 11/7/96.

⁴We recommend that the Commission adopt, without further elaboration, the statutory criteria contained in section 214(e)(1) as the rules for determining whether a telecommunications carrier is eligible to receive universal service support. . . . We agree with the majority of commenters who argue that any carrier that meets these criteria is eligible to receive federal universal service support, regardless of the technology used by that carrier. We conclude that this approach best embodies the pro-competitive, de-regulatory spirit of the 1996 Act and ensures the preservation and enhancement of universal service. (See, Joint Board Recommendation at 85 (footnote omitted).)

⁵We recommend that the Commission not impose eligibility criteria in addition to those contained in section 214(e)(1). . . . We recommend that the Commission reject arguments to disqualify certain classes of carriers from eligibility. . . . We believe that any such wholesale exclusion of classes of carriers from eligibility is inconsistent with the plain language of the 1996 Act. Section 214 contemplates that any telecommunications carrier that meets the eligibility criteria of section 214(e)(1) shall be eligible to receive universal service support. (See, Joint Board Recommendation at 85, 86.)

⁶"Section 214(e)(3) provides that, if no common carrier is willing to provide the services supported by universal service support mechanisms to a community or portion of a community that requests such services, "the Commission, with respect to interstate services, or a State, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such services for that unserved community or portion thereof." Any carrier so ordered shall be designated as

not envision limiting Universal Service support to existing carriers. The Joint Board recommended that:

. . .We agree with the majority of commenters who argue that any carrier that meets these criteria is eligible to receive federal universal service support, regardless of the technology used by that carrier. We conclude that this approach best embodies the pro-competitive, de-regulatory spirit of the 1996 Act and ensures the preservation and enhancement of universal service.⁷

The Commission concurred with the Joint Board choosing the "eligible carrier" criteria as the only requirement for Universal Service support. To ensure continued Universal Service, with the least disruption, the Commission also chose to maintain its current methodology to calculate Universal Service support for rural telephone companies. Under the new Rules, NECA will calculate Federal Universal Service support under traditional, cost-based methodology only with respect to telephone companies which are members of NECA.

Under the May 8, 1997, Universal Service Rules there is no provision to allow a new eligible carrier to become a member of NECA. Furthermore, in its Access Charge Reform Order⁸, the

the eligible telecommunications carrier for that community or portion of a community. The Joint Explanatory Statement states that section 214(e)(3) "makes explicit the implicit authority of the Commission, with respect to interstate services, and a State, with respect to intrastate services, to order a common carrier to provide [the supported services]." (See, Joint Board Recommendation at 97 (footnotes omitted).)

⁷See Joint Board Recommendation at 84, 85 (footnote omitted).

⁸In the Matter of Access Charge Reform, First Report and Order, CC Docket No. 96-262 (rel. May 16, 1997) ("Access Charge Reform Order").

Commission adopted a new definition for "telephone company" for the purposes of Part 69. Replacing the general definition of "telephone company"⁹ with the definition for "incumbent local exchange carrier," this change could be interpreted as confining NECA membership to those entities which were NECA members as of February 8, 1996.¹⁰

Consumers in all 50 states will contribute to the USF each time they utilize telecommunication services. The FCC's May 8, 1997 rules do not address how a new eligible carrier can join NECA and, therefore, obtain USF. This creates an ambiguity which makes Congress' policy of ensuring Universal Service to all Americans an empty promise to those consumers which would otherwise benefit. This is directly contrary to the Act, which requires ". . . specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service."¹¹

For example in Hawaii, Hawaii consumers have contributed approximately 3-4 million dollars per year to the USF through interstate long distance usage. However, because there are no existing telephone companies in Hawaii eligible for USF, it is

⁹A "telephone company" was defined by Part 69 as "a carrier that provides telephone exchange service" 47 C.F.R. sec. 69.2(hh) (1996).

¹⁰The new definition of "telephone company" utilizes that term "incumbent local exchange carrier" as defined in 47 U.S.C. sec. 251(h). This term is defined to be a local exchange carrier that provided telephone exchange service on the date of enactment of the 1996 Act and was, at that time, deemed to be a NECA member.

¹¹See, The Act at Sec. 254(b)(5).

unclear from the Rules whether Hawaii consumers will benefit from their own Universal Service fund contributions.

If new rural incumbent local exchange carriers, like SIC, are not able to calculate USF on a cost basis, they would be compelled to look to their rural customers for cost recovery of amounts that otherwise should be recovered through the Federal Universal Service support. This resulting escalation of local rates from consumers who have and will continue to contribute to USF is directly contrary to the fundamental goal of the USF program:

The Commission established the USF program to promote the nationwide availability of telephone service at reasonable rates. Toward this end, USF support permits high-cost LECs to reduce local rates by recovering additional expenses from the interstate services they provide.¹²

The clarification or revision of rules that allow new incumbent carriers to join NECA and obtain USF calculated under the traditional methodology, will ensure administration of the USF in a manner consistent with the Commission's goal of assisting local exchange carriers serving high-cost areas in maintaining affordable local service rates.¹³ "Section 254(b)(3) explicitly provides that customers in rural, insular and high cost areas should have access to telecommunications services that

¹²See, Border to Border Communications, Inc., 10 FCC 5055 (1995)

¹³See generally, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 96 FCC 2d 781 (1984).

are reasonable comparable to those services provided in urban areas and at similar rates to those charge in urban areas. (ftn. 47: 47 U.S.C. sec. 254(b)(3))"¹⁴ The clarification, or in the alternative reconsideration, will also serve the public interest by allowing new rural incumbent local exchange carriers, like SIC, to provide expedited and economic service to previously unserved areas. By clarifying this issue, the Commission will ensure that the public interest is properly served as NECA administers the USF in a manner consistent with the Act, the Joint Board Recommendations, and the Commission's goals.

- B. Issue: If a telephone company is not subject to the jurisdiction of the state commission, pursuant to paragraph no. 147 of the FCC rules, then who should designate a telephone company as an eligible telecommunications carrier in accordance with section 214(e)(1)?

Recommendation: That the FCC incorporate rules that allow the agency with regulatory authority over the area being served and/or the telephone company serving the area, to make the eligible telecommunications carrier designation in accordance with section 214(e)(1).

Under the Act, in order for a telephone company to receive Federal Universal Service support, it must be designated as a eligible telecommunications carrier under section 214(e)(1). This is the only criteria required under the Act, therefore, its designation is a very important issue. Designation will determine whether or not consumers located in rural, insular and high cost areas will be able to get basic universal service at a reasonable cost. Under section 214(e)(1) of the Act, the

¹⁴See CC Docket No. 96-45, infra. at 16.

designation of a telephone company as an eligible telecommunication carrier for unserved areas, with respect to intrastate services, is made by the "state commission". Where the state commission has no regulatory jurisdiction over a telephone company, this vital designation should be made by the government agency that has regulatory authority over the unserved area being served and/or the telephone company serving the area. This will ensure that the designation will be made by an agency that has knowledge regarding the unserved area and the consumers that reside there. Furthermore, this will ensure that the government agency designated to make the designation will not have a competing interest. For example, Indian Reservations that permit gambling on their property have experienced conflict with the local State government. It has become a question as to what is good for the Reservation versus what is good for the State.

The Commission acknowledged that some carriers were not under the jurisdiction of a State commission. The Commission stated:

We note that not all carriers are subject to the jurisdiction of a state commission. Nothing in section 214(e)(1), however, requires that a carrier be subject to the jurisdiction of a state commission in order to be designated an eligible telecommunications carrier. Thus tribal telephone companies, CMRS providers, and other carriers not subject to the full panoply of state regulation may still be designated as eligible telecommunications carriers.¹⁵

¹⁵See the Rules at 84, paragraph 147 (footnote omitted).

The Act, however, does not require this result. The FCC should reconsider its ruling to incorporate rules that allow the agency with regulatory authority over the area being served and/or the carrier serving the area, to make the eligible telecommunications carrier designation in accordance with section 214(e)(1) even where the agency is not the defined "state commission".

III. Public Interest:

The two issues, discussed above, if not addressed will have serious repercussions for many consumers living in rural, insular, and high cost areas. The ambiguity in the Rules jeopardizes the ability of new carriers, such as SIC, to provide Universal Service at reasonable rates.

For example, in Hawaii, the existing local telephone company required consumers to pay for the cost of service or installed party lines in sparsely-populated areas. After many years of complaints from consumers in the rural areas, the Hawaii State Legislature and the Hawaii Public Utilities Commission found that telecommunications service in the rural areas of Hawaii was inadequate. The state Legislature responded by authorizing the state Public Utilities Commission to remove the rural areas from the local telephone company's territory and allow new telephone companies to provide services to these areas, with Universal Service support. However, under the May 8, 1997 Commission Rules, these new telephone companies will only be eligible for Universal Service support calculated under traditional cost-based methodology if they become eligible carriers under the Act, and

are NECA members. Thus, it is vital that the issues discussed above be addressed to remove any ambiguity and ensure that new telephone companies serving rural, insular, and high cost areas may receive Universal service support to provide universal service at a reasonable cost to their customers.

IV. Conclusion:

The 1996 Act, Joint Board Recommendation, and FCC Rules all advocate that Universal Service i.e. telecommunications services at an affordable rate for all Americans, is in the public interest. They also advocated deregulation and the opening of the telecommunication market to competition. However, as the Rules are currently promulgated, it is not clear that a new eligible carrier is eligible to receive USF funds calculated under traditional methodology. In addition, there is no provision that would allow it to become a member of NECA. This would result in entire communities; and in the case of Hawaii, the entire state; not being able to benefit from Federal Universal Service support.

Additionally, in order to meet the purpose of the Act of providing universal service to all Americans, it should be explicit in the Rules that an agency with regulatory authority over an area and/or a carrier serving an area should be able to designate eligible carriers as long as they meet the criteria established by the Act, even if that agency does not meet the Act's definition of a "state commission". This will ensure that an agency that is familiar with the problems of the unserved area

will have the authority to designate the proper telephone company to serve the unserved area.

Therefore, for all the reasons stated above, SIC respectfully request that the Commission order: (1) the Rules be clarified or modified to allow new eligible carriers to join NECA and obtain USF under traditional methodology and (2) the incorporation of rules that allow the government agency with regulatory authority over the area being served and/or the carrier serving the area, to make the eligible telecommunications carrier designation in accordance with section 214(e)(1).

Dated: July 16, 1997



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